



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

July 9, 1948

**Hon. Bun L. Hutchinson
County Attorney
Bowie County
Texarkana, Texas**

Opinion No. V-627

**Re: Applicability of Art.
666-4(c)(1) of the
Penal Code, regulat-
ing the consumption
of alcoholic bever-
ages in any public
place, to the estab-
lishment described.**

Dear Sir:

**Your letter asking for an opinion of this de-
partment contained the following:**

**"Will you please advise me whether the
following facts constitute a private place,
and if found to be a private place, whether
Article 666-4(c)(1) would be applicable there-
to.**

**"The owner and operator of a former nite
club in Bowie County, Texas, wherein food and
beverages, including beer, are legally sold
and dancing permitted, now admits only those
with a membership card for the year 1948 paid
in advance. After such members are admitted,
food and beverages, including beer, are pur-
chased by such members, as well as dancing in-
dulged in, however, no cover charge is made
under the present plan. There is no change
of name of the business nor the ownership
thereof. The place is situated outside the
city limits of any city or town in Bowie
County, Texas."**

**Article 666-4(c)(1), Vernon's Penal Code, pro-
vides as follows:**

**"It shall be unlawful for any person to
consume any alcoholic beverages in any pub-
lic place, or for any person to possess any**

alcoholic beverages in any public place for the purpose of consuming the same in such public place, at any time on Sunday between the hours of 1:15 a.m. and 1:00 p.m., and on all other days at any time between the hours of 12:15 a.m. and 7:00 a.m."

It is provided in Section 10 of Article 667, Vernon's Penal Code, that:

"(a) It shall be unlawful for any person to sell beer or offer same for sale:

"(1) On Sunday at any time between the hours 1:00 o'clock a.m. and 1:00 o'clock p.m.

"(2) On any day except Sunday at any time prior to 7:00 o'clock a.m."

Section 10 of Article 667 applies to all places, public or private. No person shall sell beer or offer same for sale on Sunday at any time between the hours of 1:00 a.m. and 1:00 p.m. or on any day except Sunday at any time prior to 7:00 o'clock a.m. If beer is being sold or offered for sale in the place mentioned in your opinion request during the hours set out in the statute, there is clearly a violation of law.

There is no general statute defining the term "public place" nor is there a statute defining "public place" in connection with the enforcement of the Liquor Control Act. Whether a place is a "public place" when not designated as such by statute is a question of fact or a mixed question of law and fact for the determination of a jury under proper instructions from the court. *Parker v. State*, 26 Texas 207; *January v. State*, 146 S.W. 555. The definitions of the term "public place" in the Penal Code are limited to the particular offense or offenses to which they relate. However, it is reasonable to assume that the elements within the definitions, as set out in Articles 454(b) and 475 of the Penal Code, are the ones that the Legislature intended should be applied in the determination of the question of whether a particular place is a "public place". Article 454(b) of the Penal Code provides, in part, as follows:

"Any public place . . . is . . . any place at which people are assembled or to which people commonly resort for the pur-

pose of business, amusement or other lawful purposes, . . .

If, as a matter of fact, the place here being considered can be brought within the terms of Article 454(b), we are of the opinion that it is a "public place".

We are not given any facts that would indicate that the place is not a "public place". We are of the opinion that the fact that only persons with a membership card are admitted into the place is not decisive. In holding that a particular place was a "public house" under our gaming laws, it was said in Lockhart v. State, 10 Texas 275, that:

" . . . to sustain the charge in the indictment it was not necessary to prove, on the part of the State, that every person who desired had access to the room: proof that any given number of persons were permitted habitually to play there would be sufficient."

It is our opinion that the same rule would apply in the present instance. If the place here under consideration is as a matter of fact a public place, it remains such a place regardless of the method used in allowing patrons to come into the place. Clearly, a club which is not a bona fide organization but is a subterfuge or device to evade the law will furnish no protection to any person.

SUMMARY

It is a violation of law (Section 10 Article 667 of the Penal Code) for any person, in any place, public or private, to sell beer or offer same for sale, on Sunday at any time between the hours of 1:00 a.m. and 1:00 p.m. or on any day except Sunday at any time prior to 7:00 o'clock a.m.

Whether the place described in the letter of inquiry is a "public place" within the meaning of Article 666-4(c)(1), V. P. C., is a question of fact or a mixed

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question of law and fact for the determination of a jury under proper instructions from the court.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

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APPROVED:

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